

Filed for intro on 02/01/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House Bill No.HB0199  
By Odom

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3, Part 6; Title 36, Chapter 6 and Title 40, Chapter 11, relative to domestic violence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-3-601, is amended by adding the following new appropriately numbered new definition:

( ) "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include the acts of self-defense:

- (A) Attempting to cause or causing physical harm to another family or household member;
- (B) Placing a family or household member in fear of physical harm; or
- (C) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force or duress.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 11, Part 1, is amended by adding the following as a new section:

(a) In addition to the factors set out in Tennessee Code Annotated, Section 40-11-118, in making a decision concerning the amount of bail required for the release of a defendant who is arrested for or charged with an offense involving domestic or family violence as defined in Tennessee Code Annotated, Section 36-3-601, or a violation of an order of protection as authorized by Tennessee Code Annotated, Title 36, Chapter 3, Part 6, the magistrate shall review the facts of the arrest and detention of the defendant and determine whether the defendant:

- (1) Is a threat to the alleged victim or other family or household member;
- (2) Is a threat to public safety; and
- (3) Is reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with an offense involving domestic or family violence or a violation of an order of protection, the magistrate shall make findings on the record if possible concerning the determination made in accordance with subsection (a) of this section and may impose conditions of release or bail on the defendant to protect the alleged victim of domestic or family violence and to ensure the appearance of the defendant at a subsequent court proceeding. The conditions may include:

- (1) An order enjoining the defendant from threatening to commit or committing acts of domestic or family violence against the alleged victim or other family or household member;
- (2) An order prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly;
- (3) An order directing the defendant to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;

(4) An order prohibiting the defendant from using or possessing a firearm or other weapon specified by the magistrate;

(5) An order prohibiting the defendant from possession or consumption of alcohol or controlled substances; and

(6) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court.

(c) If conditions of release are imposed, the magistrate shall:

(1) Issue a written order for conditional release;

(2) Immediately distribute a copy of the order to the law enforcement agency having custody of the defendant; and

(3) Provide such law enforcement agency with any available information concerning the location of the victim in a manner that protects the safety of the victim.

(d) The law enforcement agency having custody of the defendant shall provide a copy of the conditions to the defendant upon his or her release. Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the defendant has notice of such conditions.

(e) If conditions of release are imposed without a hearing, the defendant may request a prompt hearing before the court having jurisdiction of the offense for which the defendant was arrested or is charged to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

(f) When a defendant who is arrested for or charged with an offense involving domestic or family violence or a violation of an order of protection is released from custody, the law enforcement agency having custody of the defendant shall:

(1) Use all reasonable means to immediately notify the victim of the alleged offense of the release; and

(2) Furnish the victim of the alleged offense at no cost a certified copy of any conditions of release.

(g) Release of a defendant who is arrested for or charged with a crime involving domestic or family violence or a violation of an order of protection shall not be delayed because of the requirement of subsection (f) of this section.

SECTION 3. Tennessee Code Annotated, Section 36-3-604, is amended by deleting the final sentence of subsection (a).

SECTION 4. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following as a new section:

Section\_\_\_\_. Notwithstanding any other provision of law to the contrary, the petitioner shall not be required to pay any filing fees, litigation taxes or any other costs associated with the filing, issuance or enforcement of an order of protection authorized by this part.

SECTION 5. Tennessee Code Annotated, Title 36, Chapter 6, Part 1, is amended by adding the following new sections to be codified as Sections 36-6-106, 36-6-107, 36-6-108 , 36-6-109 and 36-6-110:

Section 36-6-106. Notwithstanding any common law presumption to the contrary, in any proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.

Section 36-6-107. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding of domestic or family violence

(a) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic or family violence;

(b) The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person; and

(c) If a parent is absent or relocates because of an act of domestic or family violence by the other parent, such absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

Section 36-6-108.

(a) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic or family violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic or family violence.

(b) If a determination of domestic or family violence has been made as provided in subsection (a), the location where the parent who is not a perpetrator of domestic or family violence chooses to reside, whether within or outside the state, is rebuttably presumed to be the correct location and the one in the best interest of the child.

Section 36-6-109. In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that domestic or family violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

Section 36-6-110.

(a) A court may award visitation by a parent who committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order visitation supervised by another person or agency;

(3) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;

(4) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and twenty-four (24) hours preceding the visitation;

(5) Order the perpetrator of domestic or family violence to pay a fee to defray the costs of supervised visitation;

(6) Prohibit overnight visitation;

(7) Require a bond from the perpetrator of domestic or family violence for the return and safety of the child;

(8) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic or family violence, or other family or household member.

(c) Whether or not visitation is allowed, the court may order the address of the child and the victim to be kept confidential.

(d) The court may refer but shall not order an adult who is a victim of domestic or family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family

violence as a condition of receiving custody of a child or as a condition of visitation.

(e) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

SECTION 6 . This act shall take effect July 1, 1995, the public welfare requiring it.

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